

After Recording Return to:
City Manager
City of Frisco
6101 Frisco Square Boulevard
Frisco, Texas 75034

DEVELOPMENT AGREEMENT

(Custer Star – Eldorado at Custer)

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into by and between the **CITY OF FRISCO, TEXAS**, a municipal corporation (“Frisco”) and **Eldorado Crossing, LLC**, a Texas limited liability company (“Owner”).

WHEREAS, Owner owns 27.900 acres, more or less, situated in the Andrew S. Young Survey, Abstract No. 1037, Collin County, Texas and adjacent to Custer Road, as more particularly described in Exhibit “A”, attached hereto and incorporated herein for all purposes (the “Property”); and

WHEREAS, the Texas Department of Transportation (“TxDOT”) has plans to reconstruct Custer Road (FM 2478) (“Custer Road”), including without limitation, the construction of six (6) travel lanes, the reconstruction of pre-existing driveway connections within the right-of-way, and the construction of median openings and deceleration lanes along Custer Road (the “Project”); and

WHEREAS, the Owner has, in conjunction with the construction of the Project and based on the direct benefit to the Property, requested the construction of one (1) left turn bay and one (1) right-turn deceleration lane within the TxDOT right-of-way on Custer Road at the locations hereinafter described (hereinafter defined as the “Property Access Improvements”); and

WHEREAS, TxDOT has agreed to construct, as part of its reconstruction of Custer Road, the Property Access Improvements at the locations hereinafter set forth provided:

WHEREAS, as a condition of TxDOT’s construction of the Property Access Improvements made the subject of this Agreement, TxDOT requires that Frisco tender the construction costs therefore; and

WHEREAS, in consideration for the construction of the Property Access Improvements at the locations desired by Owner, Frisco requires Owner to place the costs related to the construction of the Property Access Improvements in escrow as hereinafter set forth; and

WHEREAS, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to participate in the construction of the Project as provided herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Frisco and Owner agree as follows:

1. **Description of Project.** The Project consists of the construction of certain improvements to Custer Road, including without limitation, the location and construction of six

(6) travel lanes, median openings, and deceleration lanes along Custer Road, as more particularly depicted on Exhibit B, attached hereto and incorporated herein for all purposes.

2. **Land Subject to Agreement.** The land that is the subject of this Agreement is the Property. Owner represents it is the sole owner of the Property.

3. **Design of Property Access Improvements.** TxDOT requires that all design changes for the Project be made by their design consultant, Kennedy Consulting, Inc., and that the modified plans be submitted to TxDOT by Frisco. Owner agrees that it will contact and coordinate with Kennedy Consulting, Inc. in order to incorporate the Property Access Improvements into the design for the Project. Owner agrees to pay the fee, if any, for these services directly to Kennedy Consulting, Inc., separate and apart from this Agreement. Owner agrees to have the modified plans delivered to Frisco, and Frisco agrees to submit them to TxDOT.

4. **Location of Property Access Improvements.** In exchange for the payment of the design and construction costs, TxDOT has agreed to construct the Property Access Improvements: (a) at the locations shown on Exhibit "B," and (b) in accordance with TxDOT design and construction standards. The median opening and deceleration lanes located immediately adjacent to a portion of the Property are depicted on Exhibit "B" (the "Property Access Improvements"), however the exact location of the Property Access Improvements are subject to change, as solely determined by TxDOT. If the ultimate location(s) of the Property Access Improvements is/are changed, in whole or in part as described herein, resulting in the complete removal of any portion of the Property Access Improvements from the Project, Frisco will return the associated Escrow Funds (hereinafter defined), exclusive of any interest earned, if any, to the Owner within thirty (30) days of TxDOT's final decision with regard to the complete removal of the portion of the Property Access Improvements from the Project.

5. **Completion of Construction of Access Improvements.** Owner acknowledges and agrees that Frisco cannot control the completion of construction, including without limitation, the timeline therefore, of the Property Access Improvements, and, as such, Owner agrees that Frisco shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Property, resulting, in whole or in part, directly or indirectly, from TxDOT's failure to complete the construction of the Property Access Improvements by any certain date and/or as set forth in this Agreement.

6. **Construction of Project.** TxDOT will construct the project including the Property Access Improvements. Owner has provided Frisco with the estimate of the costs to construct the Property Access Improvements, which amount is anticipated to be Sixty Thousand Five Hundred Forty-Nine and 56/100 Dollars (\$60,549.56), as more particularly described in Exhibit "D," attached hereto and incorporated herein for all purposes (the "Property Access Improvements Estimated Construction Costs"). The phrase "construction costs" as used herein shall mean the actual construction costs, TxDOT engineering and contingency fee, surveying costs, landscape design, geotechnical materials testing and inspection fees associated with the Property Access Improvements. The phrase "cost overruns" as used herein shall mean costs,

which may be incurred by TxDOT in the construction of the Property Access Improvements and which are over and above the Property Access Improvements Estimated Construction Costs.

7. **Owner's Completion of Grading Improvements Necessary for Construction of Property Access Improvements.** TxDOT and Frisco have identified necessary grading improvements that are required to be completed by Owner, at Owner's sole cost and expense, prior to the construction of the Property Access Improvements, as more particularly described in Exhibit "C" (the "Required Grading Improvements"). Owner agrees to complete the Required Grading Improvements no later than May 1, 2009. If deemed necessary by Owner, Frisco agrees to issue Owner a conditional and/or temporary grading permit to assist the Owner solely in the completion of the Required Grading Improvements.

8. **Owner's Payment of the Property Access Improvements.** Within fifteen (15) days of its execution of this Agreement, Owner will pay into an escrow account, at the location solely determined by Frisco, funds equal to the Property Access Improvements Estimated Construction Costs (the "Escrow Funds"). The Escrow Funds will be available to Frisco to pay TxDOT for the construction costs associated with the Property Access Improvements, and Frisco shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Escrow Funds in connection with the construction of the Property Access Improvements. Frisco shall further be entitled to, as its sole property, any and all interest earned on the Escrow Funds, and Owner hereby waives and relinquishes any and all rights or claim to interest earned, if any, on the Escrow Funds. In addition, if any amount of the Escrow Funds remains in the account after TxDOT has issued a final letter of acceptance for the construction of Custer Road, including but not limited to, the Property Access Improvements, as solely determined by Frisco, ("Remaining Escrow Funds"), Owner shall be entitled to, as its sole property, the Remaining Escrow Funds. Frisco may, in its sole discretion, utilize the interest earned on the Escrow Funds, if any, for any purpose. Further, Owner shall, within forty-five (45) days of receiving written notice from Frisco, tender to Frisco any and all construction cost overruns associated with the construction of the Property Access Improvements. Notwithstanding anything to the contrary herein, Frisco and Owner agree that Frisco shall, under no circumstance, be responsible for any part or portion of the construction costs associated, directly or indirectly, with the Property Access Improvements.

9. **Disclaimer / Waiver of Damages / Liability.** (a) Owner acknowledges and agrees that Frisco is not providing any guarantee, representation and/or warranty, and Frisco hereby disclaims any guarantee, representation and/or warranty, of any work performed by TxDOT or Frisco, their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Property Access Improvements, in whole or in part.

(b) **OWNER HEREBY RELEASES FRISCO, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM AND AGAINST, AND WAIVES ANY AND ALL RIGHTS TO, ANY AND ALL CLAIMS AND/OR DEMANDS FOR DAMAGES (PERSONAL OR PROPERTY), INJURY (INCLUDING DEATH), OR OTHERWISE, IT/THEY MAY HAVE WITH REGARD TO THE CONSTRUCTION AND/OR COMPLETION OF THE PROPERTY ACCESS IMPROVEMENTS AND/OR OR ANY OTHER ACT AND/OR OMISSION RELATING, DIRECTLY OR INDIRECTLY, TO THE PROPERTY ACCESS IMPROVEMENTS, IN WHOLE OR IN PART, AS APPROVED IN THIS AGREEMENT, EXCEPT**

TO THE EXTENT ANY SUCH CLAIMS ARISE DUE TO, OR DAMAGES ARE CAUSED BY, SOLELY AND DIRECTLY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF FRISCO OR ITS AUTHORIZED COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES OR EMPLOYEES.

10. INDEMNIFICATION. OWNER HEREBY AGREES TO FULLY DEFEND, INDEMNIFY, AND HOLD HARMLESS, FRISCO, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENCE, GROSSLY NEGLIGENCE, AND/OR INTENTIONAL ACT AND/OR OMISSION OF OWNER, THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES AND/OR ANY OTHER THIRD PARTIES FOR WHOM OWNER AND/OR TxDOT IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF THE CONSTRUCTION OF THE PROPERTY ACCESS IMPROVEMENTS PURSUANT TO THIS AGREEMENT, (HEREINAFTER "CLAIMS"). IN ITS SOLE DISCRETION, FRISCO SHALL HAVE THE RIGHT TO REASONABLY APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY OWNER IN FULFILLING ITS OBLIGATION TO HEREUNDER DEFEND AND INDEMNIFY FRISCO, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY FRISCO IN WRITING. FRISCO RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, FRISCO IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY FRISCO IS NOT TO BE CONSTRUED AS A WAIVER OF OWNER'S OBLIGATION TO DEFEND FRISCO OR AS A WAIVER OF OWNER'S OBLIGATION TO INDEMNIFY FRISCO PURSUANT TO THIS AGREEMENT. OWNER SHALL RETAIN FRISCO-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF FRISCO'S WRITTEN NOTICE THAT FRISCO IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF OWNER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, FRISCO SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND OWNER SHALL BE LIABLE FOR ALL COSTS INCURRED BY FRISCO. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

11. PARTIES ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(A) OWNER ACKNOWLEDGES AND AGREES THAT:

(I) THE FEES TO BE IMPOSED BY FRISCO REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:

(A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;

(B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;

- (C) NUISANCE; AND/OR
 - (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.
- (II) THE AMOUNT OF OWNER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT OWNER'S DEVELOPMENT PLACE ON FRISCO'S INFRASTRUCTURE.
- (III) OWNER HEREBY AGREES THAT ANY PROPERTY TO WHICH IT CONVEYS TO FRISCO, IF ANY, PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY OWNER FOR SUCH LAND, AND OWNER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. OWNER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY FRISCO RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF OWNER'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. OWNER AND FRISCO FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.
- (IV) OWNER SHALL INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES BROUGHT PURSUANT TO THIS PARAGRAPH.
- (B) OWNER RELEASES FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.
- (C) OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

(D) **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

12. **Limitations of Agreement.** The parties hereto acknowledge this Agreement is limited to the Property Access Improvements only. Frisco Ordinances covering property taxes, utility rates and fees, park dedication, perimeter streets, pro rata fees, any and all impact fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Owner to Frisco under any other ordinance whether now existing or in the future arising.

13. **Default.** In the event Owner fails to comply with any of the provisions of this Agreement within ten (10) business days after written notice thereof from Frisco, Frisco shall have the following remedies in addition to Frisco's other rights and remedies, at law or in equity:

- (a) to refuse to issue any and all building permits for the Property; and/or
- (b) to, without notice or any other action of Frisco, immediately revoke any and all building permits issued, and any construction and/or development of the Property shall immediately cease; and/or
- (c) to file this instrument in the Land Records of Collin County as a lien and/or encumbrance against the Owner and/or the Property; and/or
- (d) to refuse to accept any portion of any public improvements on the Property and/or associated with the development of the Property; and/or
- (e) to refuse to finally accept the Property and/or any portion thereof; and/or
- (f) to immediately, without further notice to the Owner, cease any and all design and/or construction of the Property Access Improvements; and/or
- (g) to seek specific enforcement of this Agreement.

In the event of Frisco's default under this Agreement, Owner will be entitled to seek specific performance and/or any other remedy available to them at law or in equity.

14. **Continuity.** This Agreement shall be a covenant running with the land and shall be binding upon Owner, its officers, directors, agents, representatives, employees, heirs, representatives, legatees, successors, assigns, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Collin County.

15. **Miscellaneous.**

(a) **Notice.** Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party

to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to City: City of Frisco
Attention: City Manager
6101 Frisco Square Boulevard, 5th Floor West
Frisco, Texas 75034

With Copy to: Abernathy, Roeder, Boyd and Joplin, P.C.
Attention: Rebecca Brewer
1700 Redbud Blvd., Suite 300
McKinney, Texas 75070-1210

If to Developer: Eldorado Crossing, LLC
Attention: Robert Dorazil
7001 Preston Road, #500
Dallas, Texas 75205

(b) **Assignment.** This Agreement is not assignable without the prior written consent of Frisco.

(c) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

(f) **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this

Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) **Savings / Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) **Sovereign Immunity.** The parties agree that Frisco has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) **Vested Rights / Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code and nothing in this Agreement provides Frisco with fair notice of any project of the Owner. **OWNER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

(o) **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

(p) **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby

incorporated into the body of this Agreement and adopted as findings of Frisco and the Owner and/or its authorized representatives.

(q) **Owners' Warranties / Representations.** All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to Frisco under this Agreement shall be considered to have been relied upon by Frisco, and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by Frisco or on Frisco's behalf.

(r) **References to Owner.** "Owner" as used herein shall mean Owner, its officers, directors, agents, representatives, employees, heirs, representatives, legatees, successors, assigns, grantees, contractors, subcontractors, invitees, licensees, trustees and/or any other third party for whom Owner is legally responsible.

(s) **Indemnification.** The parties agree that the Indemnity provisions set forth in Paragraphs 10 and 11 herein are conspicuous, and the parties have read and understood the same.

(t) **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

CITY OF FRISCO, TEXAS

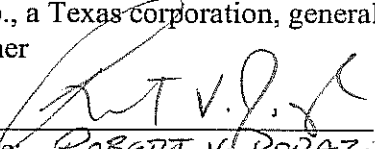
By: _____
George Purefoy, City Manager

Date: _____

ELDORADO CROSSING LLC,
a Texas limited liability company

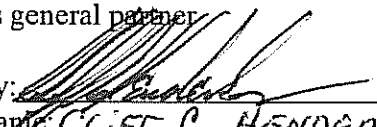
By: UCD Eldorado LP,
a Texas limited partnership, member

By: United Commercial Development
Corp., a Texas corporation, general
partner

By: 
Name: ROBERT V. PORZIVIL
Title: Vice-President

By: **LCG Investments Co., L.P.,**
a Texas limited partnership, member

By: C-Star Investments, LLC,
a Texas limited liability company,
its general partner

By: 
Name: CLIFF C. HENDERSON
Title: GENERAL PARTNER PRESIDENT

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE DULY AUTHORIZED REPRESENTATIVE FOR THE CITY OF FRISCO, TEXAS, AND HE EXECUTED THE SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2008.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

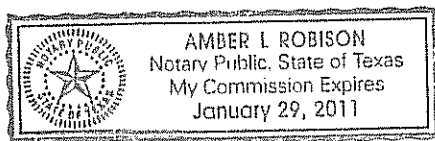
My commission expires: _____

STATE OF TEXAS:

COUNTY OF DALLAS :

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED ROBERT DORRILL - VP, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE DULY AUTHORIZED REPRESENTATIVE FOR THE ELDORADO CROSSING LLC, AND HE EXECUTED THE SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 24th DAY OF OCTOBER, 2008.



Amber Robison

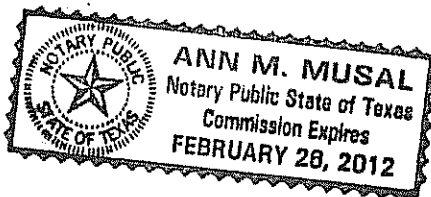
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 1/29/11

STATE OF TEXAS:

COUNTY OF Collin :

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED CLIFF C. HENDERSON, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE DULY AUTHORIZED REPRESENTATIVE FOR THE LCG INVESTMENTS CO., L.P. AND HE EXECUTED THE SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 27 DAY OF OCTOBER, 2008.



Ann M. Musal
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: February 26, 2012

EXHIBIT “A”

(DESCRIPTION OF THE PROPERTY)

[Three (3) pages attached]

STATE OF TEXAS:

COUNTY OF COLLIN:

BEGNNING at a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner in the northwesterly corner of a corner clip at the intersection of ELDORADO PARKWAY (variable-width right-of-way), and HALF HITCH TRAIL (50 foot right-of-way).

THENCE along the easterly right-of-way of said HALF HITCH TRAIL North 00 deg 12 min 30 sec East a distance of 1343.97 feet to an Aluminum Monument found for corner, said point also being the most northwesterly corner of said Tract One, and the most southwesterly corner of a tract of land conveyed to MDC-WINDING CREEK ESTATES, as recorded in CC#20060616000827610.

THENCE along the southerly line of said MDC-WINDING CREEK ESTATES tract, South 89 deg 08 min 43 sec East, a distance of 966.08 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner in the westerly right-of-way line of CUSTER ROAD (90 foot right-of-way), from which a railroad spike bears South 45 deg 40 min 00 sec East a distance of 7.36 feet.

THENCE along the westerly right-of-way of said CUSTER ROAD as follows:

South 01 deg 19 min 17 sec West a distance of 670.62 feet to a 3/8 inch iron rod found for corner, said point being the most northeasterly corner of a tract of land conveyed to L.C.G. Investment Co., L.P. as recorded in Volume 5671, Page 257 (LRCCT).

Along the easterly line of said L.C.G. Investment Co., L.P. tract South 01 deg 18 min 45 sec West a distance of 74.60 feet to a 5/8 inch iron rod found for corner;

North 88 deg 59 min 25 sec West a distance of 15.35 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner;

South 04 deg 17 min 02 sec West a distance of 66.14 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner;

South 85 deg 30 min 27 sec East a distance of 11.01 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner, said point being the beginning of a tangent curve to the left having a radius of 5059.66 feet, and a chord bearing South 04 deg 06 min 50 sec West a distance of 206.46 feet;

CONTINUING along said tangent curve to the left through a central angle of 02 deg 20 min 17 sec for a distance of 206.48 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner, said point being the beginning of a tangent curve to the right having a radius of 111.11 feet, and a chord bearing South 14 deg 27 min 07 sec West a distance of 44.33 feet.

CONTINUING along said tangent curve to the left through a central angle of 23 deg 00 min 51 sec for a distance of 44.63 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner, said point being the beginning of a tangent curve to the left having a radius of 204.18 feet, and a chord bearing South 21 deg 36 min 20 sec West a distance of 36.46 feet;

CONTINUING along said tangent curve to the left through a central angle of 08 deg 42 min 26 sec for a distance of 36.50 feet to a ½ inch iron rod found for the most northeasterly corner of Lot 1, Block A of UNITED COMMERCIAL ADDITION, an addition to the City of Frisco as recorded in Cabinet 2008, Page 38;

THENCE departing the westerly right-of-way line of said CUSTER ROAD North 89 deg 27 min 10 sec West a distance of 278.85 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner;

THENCE along the west side of said UNITED COMMERCIAL ADDITION Tract South 00 deg 32 min 50 sec West a distance of 275.89 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner in the northwesterly right-of-way line of said ELDORADO PARKWAY;

THENCE along the northerly line of said ELDORADO PARKWAY as follows:

South 86 deg 43 min 59 sec West a distance of 59.68 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner;

North 89 deg 27 min 10 sec West a distance of 363.66 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner;

North 83 deg 44 min 32 sec West a distance of 110.55 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner;

North 89 deg 27 min 10 sec West a distance of 65.57 feet to a ½ inch iron rod with a red plastic cap stamped “WAI” set for corner;

North 44 deg 37 min 20 sec West a distance of 35.47 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 27.900 acres, or 1,215,314 square feet, more or less. Bearings cited hereon are based on Frisco Heights – Phase 1, an addition to the City of Frisco, as recorded in Cabinet O, Page 113, Plat Records of Collin County, Texas (PRCCT).

EXHIBIT “B”

***DESCRIPTION OF PROJECT /
DEPICTION OF PROPERTY ACCESS IMPROVEMENTS***

[One (1) Page Attached]

EXHIBIT “C”

***DESCRIPTION OF GRADING IMPROVEMENTS
RELATING TO CONSTRUCTION OF DECELERATION LANE ON
CUSTER ROAD***

[One (1) Page Attached]

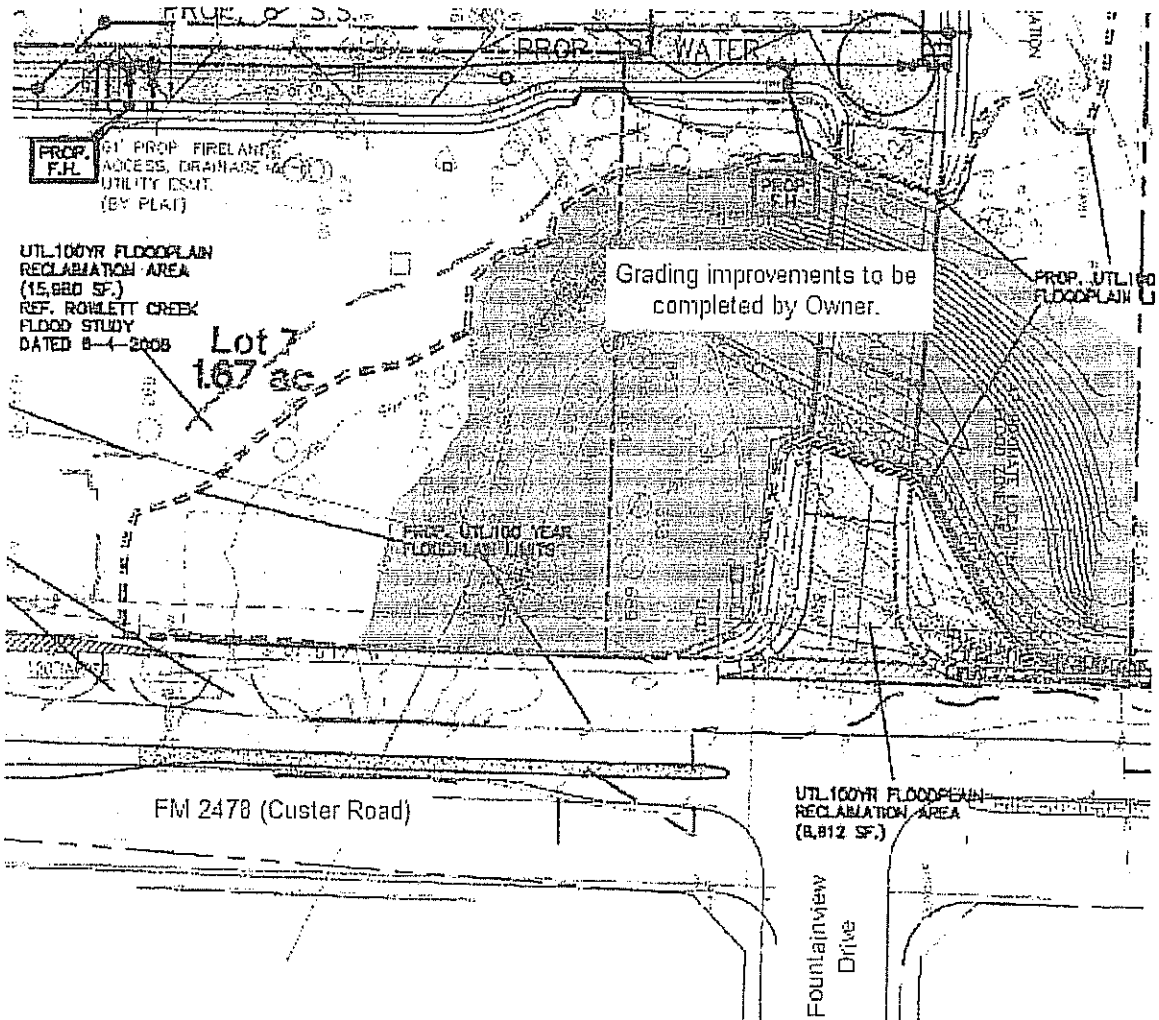


EXHIBIT “D”

CONSTRUCTION COST ESTIMATE

[Two (2) Pages Attached]

EXHIBIT "D"
OPINION OF PROBABLE CONSTRUCTION COST ("OPCC")
ADDITIONAL CUSTER ROAD PROPERTY ACCESS IMPROVEMENTS
FOR CUSTER STAR – NORTHWEST CORNER OF ELDORADO PARKWAY AT
CUSTER ROAD

I. ITEM ONE – DECELERATION LANE

Item	Description	Qty.	Amount	Total Cost
	<i>Direct Cost</i>			
A.	22" LIME STABILIZATION	315 SY	\$ 6.00	\$ 1,890.00
B.	LIME	16 TON	\$ 130.00	\$ 2,080.00
C.	10' CONCRETE PAVING	300 SY	\$ 45.00	\$ 13,500.00
D.	4" TYPE 'B' HMAC	300 SY	\$ 15.00	\$ 4,500.00
E.	MOISTURE CONDITIONING	300 SY	\$ 3.00	\$ 900.00
F.	CONCRETE CURB	300 LF	\$ 17.00	\$ 5,100.00
G.	PAVEMENT MARKINGS	1 LS	\$ 1,000.00	\$ 1,000.00
	<u>SUBTOTAL – DIRECT COST</u>			\$ <u>28,970.00</u>
	<i>Indirect Cost</i>			
H.	TxDOT Charges – Indirect Cost	10%	\$ 28,970.00	\$ 2,897.00
	<u>SUBTOTAL – INDIRECT COST</u>			\$ <u>2,897.00</u>
GRAND TOTAL – ITEM ONE, DECELERATION LANE				\$ 31,867.00

EXHIBIT "D"
OPINION OF PROBABLE CONSTRUCTION COST ("OPCC")
ADDITIONAL CUSTER ROAD PROPERTY ACCESS IMPROVEMENTS
FOR CUSTER STAR – NORTHWEST CORNER OF ELDORADO PARKWAY AT
CUSTER ROAD

I. ITEM TWO – LEFT TURN LANE AT FOUNTAINVIEW

Item	Description	Qty.	Amount	Total Cost
	<i>Direct Cost</i>			
A.	EMBANKMENT	287 CY	\$ 10.00	\$ 2,870.00
B.	LIME (HYD. LIME (SLURRY))	21 TON	\$ 110.00	\$ 2,310.00
C.	LIME TRT (EXIST MAT)(22")	324 SY	\$ 3.50	\$ 1,134.00
D.	D-GR HMA (QCQA) TY-B PG64-22	71 TON	\$ 48.25	\$ 3,425.75
E.	CONC PVMT (CONC RENF-CRCP)(10")	218 SY	\$ 40.00	\$ 8,720.00
F.	LANDSCAPE PAVERS	75 SY	\$ 55.00	\$ 4,125.00
G.	CONC CURB (MONO)(TY II)	206 LF	\$ 2.00	\$ 412.00
H.	CONC MEDIAN	6 SY	\$ 48.00	\$ 288.00
I.	REFL PVMT MARKING (W)(8")(SLD)	90 LF	\$ 0.75	\$ 67.50
J.	REFL PVMT MARKING (W)(ARROW)	1 EA	\$ 100.00	\$ 100.00
K.	REFL PVMT MARKING (W)(WORD)	1 EA	\$ 140.00	\$ 140.00
L.	REFL PVMT MARKING (Y)(4")	216 LF	\$ 0.30	\$ 64.80
M.	REFL PVMT MARKING TY I-C	5 EA	\$ 3.60	\$ 18.00
N.	MOBILIZATION	1 LS	\$ 2,400.00	\$ 2,400.00
	<u>SUBTOTAL – DIRECT COST</u>			\$ <u>26,075.05</u>
	<i>Indirect Cost</i>			
O.	TxDOT Charges - Indirect Cost	10%	\$ 26,075.05	\$ 2,607.51
	<u>SUBTOTAL – INDIRECT COST</u>			\$ <u>2,607.51</u>
GRAND TOTAL – ITEM TWO, LEFT TURN LANE AT FOUNTIANVIEW				\$ 28,682.56